

Serial No.: 09/413,012

Docket No.: R0052CON

Preliminary Amendment Dated November 7, 2005

Responsive to the FINAL Office Action dated September 7, 2005

REMARKS

Claims 34-71 remain pending.

Responsive to the final Office Action dated September 7, 2005, Applicants file a Request for Continued Examination along with this Preliminary Amendment.

5 The undersigned wishes to thank Examiner Nguyen for a courteous and productive telephonic interview on November 7, 2005. In the interview the differences between the unamended claims and the references cited in the final Office Action were discussed.

In the final Office Action, the Examiner indicated that claims 36, 45, 51, 54, 61, and 67-71 are withdrawn from further consideration as being drawn to non-elected species. Applicants believe that some of these claims should not be withdrawn, as they read on elected species. Nevertheless, Applicants believe that following this amendment that all of the independent claims will be in condition for allowance, and generic to the elected species, and therefore any remaining withdrawn claims will be reinstated. Accordingly, a detailed explanation of which claims should and should not be withdrawn is omitted.

15 Numerous claims stand rejected under 35 U.S.C. §102(b) as being anticipated by Rosenbluth, et al. (USPN 5,007,898), or under 35 U.S.C. §102(e) as being anticipated by Chin, et al. (USPN 5,980,549). Furthermore, other claims stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rosenbluth, et al.

20 Applicants gratefully acknowledge the indication that claims 35, 44, 54, and 64 would be allowable pending incorporation into their respective base and any intervening claims. Each of the four independent claims will be addressed separately below.

Claim 34

25 Though Applicants do not agree with the rejection of claim 34, allowable claim 35 has been amended into independent form to facilitate issuance of the application. Specifically, claim 35 has been incorporated into independent claim 34 as suggested by the Examiner. At the same time, claims 35 and 36 have been amended to remove any inconsistency and to cover aspects of

Serial No.: 09/413,012

Docket No.: R0052CON

Preliminary Amendment Dated November 7, 2005

Responsive to the FINAL Office Action dated September 7, 2005

the invention that are disclosed in the drawings and at the top of page 9, for example. Accordingly, claims 34-42 are believed to be in condition for allowance.

Claim 43

5 Applicants assert that neither Rosenbluth, et al. nor Chin, et al. anticipate claim 43, which provides a tissue dissector kit having a cannula and a tapered distal tissue dissecting tip disposed on a distal end thereof. The cannula incorporates a locking mechanism proximal to the distal tip, to which a mating lock of each of a plurality of dilating elements attaches. Each different dilating element has a cross-sectional dimension greater than the cross-sectional dimension of the distal
10 end of the cannula and the distal tip, wherein different dilating elements may be mounted one at a time on the cannula for dissecting tissue and therefore forming cavities of differing dimensions.

The Examiner notes that Rosenbluth, et al. has "a dilating element (62)" and "a locking mechanism (106)" positioned on the cannula. However, the dilating element (62) of Rosenbluth, et al. is a dilatation balloon that is "bonded to the outer perimeter of the catheter shaft 56 by
15 suitable adhesive or thermal process." (See sentence spanning columns 5-6) Furthermore, element 106 is described in the paragraph in column 7, lines 46-56 as a "heavy black line" that is used as a location marker to prevent accidental dilatation of the sphincter. Therefore Applicants do not find agreement between the elements cited by the Examiner and the elements in claim 43.

As for Chin, et al., the Examiner identifies "a dilating element (124)" and "a locking
20 mechanism (see col. 9, line 65-66, and column 10, lines 1-4) positioned on the cannula proximal to the distal tip..." However, element 124 in Chin, et al. is described as "a sleeve type of balloon 124" having both its distal and proximal ends "secured to the exterior wall 126 of the cannula" (last sentence of column 5), and the discussion spanning columns 9-10 does not refer to a locking mechanism for removably attaching the balloon 124.

25 For these reasons, Applicants assert that claim 43 is not anticipated by either of the cited references.

Serial No.: 09/413,012

Docket No.: R0052CON

Preliminary Amendment Dated November 7, 2005

Responsive to the FINAL Office Action dated September 7, 2005

Claim 52

With regard to claim 52, Applicants assert that neither Rosenbluth, et al. nor Chin, et al. discloses a distal tip having tapered outer walls converging to a blunt end for dissecting tissue, and in addition a solid dilating element of fixed outer dimension disposed on the cannula proximal to the distal tip and having a cross-sectional dimension greater than the cross-sectional dimension of the distal end of the cannula and the distal tip, as claimed.

The dilating element (62) of Rosenbluth, et al. is a dilatation balloon that is by definition inflatable and not solid. Likewise, the "sleeve type of balloon 124" of Chin, et al. is also not solid.

Therefore, Applicants believe that claim 52 and its dependents are allowable over the cited references.

Claim 63

With regard to claim 63, Applicants assert that neither Rosenbluth, et al. nor Chin, et al. discloses a dilating unit removably mounted on the cannula distal end including a distal tip having tapered outer walls converging to a blunt end for dissecting tissue and a dilating element located proximally with respect to the distal tip and having a cross-sectional dimension greater than the cross-sectional dimension of the distal end of the cannula and the distal tip.

As stated above, the dilatation balloon 62 disclosed in Rosenbluth, et al. is bonded to the outer perimeter of the catheter. Likewise, the balloon 124 of Chin, et al. is secured to the exterior wall of the cannula.

Therefore, Applicants believe that claim 63 and its dependents are allowable over the cited references.

Dependent claims

Applicants wish to point out that there are numerous aspects present in the dependent claims that are also not anticipated by the cited references. For example, the spacer of a particular length between the dilating element and the distal tip as in claim 47 is believed novel over the

Serial No.: 09/413,012
Docket No.: R0052CON
Preliminary Amendment Dated November 7, 2005
Responsive to the FINAL Office Action dated September 7, 2005

cited references, and the advantage provided thereby is described at the bottom of page 8 of the specification.

Conclusion


5 There are no additional claim fees or extension of time fees.

 Accordingly, Applicants believe that based on the above amendments and remarks, and after any withdrawn claims are reinstated, claims 34-71 are in condition for allowance. Such action is respectfully solicited. If there is any further hindrance to allowance of the present application, the Examiner is encouraged contact the undersigned by telephone.

10

Respectfully submitted,

Date: November 7, 2005


Guy Cumberbatch, Reg. No. 36,114
(805) 201-3006
c/o Lena Vinitskaya, Reg. No. 39,448
3200 Lakeside Drive
Building B, 3rd Floor, M/S 314
Santa Clara, CA 95054
(408) 845-1978
(408) 845-3987 (facsimile)

15

20